IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/08/2002

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 20424 of 2002
AND
WMP.No. 28264 OF 2002

J.Maneksha Babu ..Petitioner

-Vs-

1. Manonmaniam Sundaranar University
rep. by its Vice Chancellor, Tirunelveli

2. The Controller of Examinations
Manonmaniam Sundaranar University
Tirunelveli

3. Noorul Islam College of Engineering,
Kumaracoil, Thuckalay
Kanyakumari District rep. by its
Chairman. ..Respondents

For petitioner:: Mr.A.L.Somayaji Senior Counsel
Mr.Goldwern and Mr.B.Vijaya Kumar

For respondents: Mr.Subbiah for RR1 and 2 Mr.S.
Parthasarathy for R.3

Petition filed under Article 226 of The Constitution of India praying
for the issue of a writ of certiorarified mandamus, as stated therein.

:O R D E R

The petitioner prays for the issue of a writ of certiorarified
mandamus to call for the proceedings of the second respondent in
No.MSUgE&R/2001-2002 dated 30.1.2002 and No.MSU/E&R/2002 dated 6.5.2002 quash
the same and consequently permit the petitioner herein to continue with his
M.Sc., (Computer TechonologygP.G.Degree course) without any interruption in
the first respondent University and for other consequential remedies.

2. On 13.6.2002, the writ petition was admitted and rule nisi was

ordered. The respondents have been served. The respondents have entered appearance and filed their counter. With the consent of counsel on either side the writ petition itself is taken up for final disposal.

3. The petitioner who has acquired BCA Degree (Bachelor of Computer Applications) applied to the third respondent college for admission to M.Sc Computer Technology course (Post Graduate Course) for which course of study third respondent college has been affiliated to the first respondent University. It is aleged that The order of affiliation does not contain any prescription with respect to minimum eligibility criteria for admission to M.Sc computer technology course is concerned. There is no stipulation as to the minimum eligibility for admission to M.Sc.Computer Technology course. The petitioner claims that he had studied all the relevant subjects in B.C.A and therefore he is eligible to be admitted to M.Sc.computer Technology course. The third respondent college entertained the application submitted for admission to M.S.C., computer Technology course for the year 2001-2002 and the petitioner was admitted to the first year course. The petitioner also appeared in the first semester examinations for the M.Sc Computer Technology. The petitioner also states that he has completed one year and he has to appear for the second semester examination for the first year computer technology. The second respondent by the impugned communication dated 6.5.2002 addressed the third respondent college intimating that the petitioner is not eligible to be admitted for M.Sc Computer Technology course as he is not possessed of the eligibility qualification for the admission. The petitioner refers to syllabus for the B.C.A tries to justify that he possess the equivalent qualification and that it should be construed that he possess the qualification prescribed for admission to M.Sc.Computer Technology course. It is the claim of the petitioner that he is eligible for admission to M.Sc computer technology. The petitioner also claims that in Periyar University the minimum eligibility for admission has been prescribed as Bachelor of Computer Application as one of the qualification and therefore there is no reason either for the first respondent university to fix or stipulate a different eligibility. The respondents are estopped from going back and abruptly interfere with the studies of the petitioner. The petitioner is sought to be disqualified on trivial and non est grounds or reasons. Being aggrieved by the impugned order, the present writ petition has been filed to quash the impugned order and for consequential directions to enable the petitioner to continue his M.Sc computer technology course under the first respondent university in the third respondent college.

4. On behalf of the second respondent a counter has been filed. It is contended that as per the statutes, the first respondent University has to sue and to be sued through the Registrar and not through the Vice Chancellor and therefore the writ petition as framed against the first respondent is bad in law. It is alleged that it is only the third respondent who has brought out the present writ petition in the name of the petitioner. The third respondent was granted permissiong affiliation to start M.Sc Computer Technology Course during academic year 2001-2002 for the first time. Even while granting affiliationg permission it has been prescribed that the eligibility for admission to the said M.Sc Computer Technology course is a pass in B.Sc computer technology or B.Sc Information Technology with three

years course with the subjects of (1) Principles of Programming Languages, (2) Object oriented Programming through C++, (e) Advanced Data Base Management System, (4) Software Engineering, (5) C++ programming Laboratory, and (6) Oracle Laboratory. When the eligibility qualification has been prescribed, no question of considering any equivalent qualification would arise. The Principals of all the affiliated colleges including the third respondent college are members of the Senate of the first respondent University and are represented in Standing committee on academic affairs and Syndicate. Contrary to the regulations the third respondent had admitted the petitioner to the M.Sc Computer Technology course who has no eligibility for admission as per the regulations of the University. Such admission has been given deliberately by the third respondent college to earn money by way of fees apparently knowing well that there would not be enough candidates possessing the prescribed qualification to take the course. In any event the writ petitioner has also not secured 50% marks prescribed. The third respondent college having illegally admitted the petitioner apparently in order to allow the petitioner to complete the first semester and to register for the first semester examinations delayed sending of application of the petitioner for consideration as to his eligibility for admission till the end of September, 2001 though he has been admitted during July 2001. On 27.9.2001, the third respondent purported to forward the application of the petitioner along with few others for deciding the eligibility of the petitioner. While scrutinising the application of the petitioner it was found that he is not eligible for admission to M.Sc Computer Technology Course as per the University's Regulations and the same was communicated to the third respondent college, besides the results of the first semester examination was withheld.

5. The third respondent collage by its letter dated 5.2.2002 addressed the University requesting for relaxation of the admission of the petitioner as a special case which was not acceptable to the University and it was negatived. Hall ticket has been issued as a matter of routine on the basis of list of candidates furnished by the third respondent college. Mere issuance of hall ticket will not mean that the petitioner has been admitted validly. The moment the ineligibility was brought to the notice of the second respondent and the results of the examination were withheld. When the petitioner being ineligible to be admitted cannot seek the relief of writ of certiorari and mandamus as prayed for.

6. The syllabus structure for B.Sc., Computer Science and B.SC Computer Technology as well as BCA are not identical. The syllabus for both degree courses are as prescribed by the Tamil Nadu State Council for Higher Studies and the syllabus are different for the two Branches. In B.Sc. Computer science, the emphasis is more on mathematics while in B.Sc., computer technology emphasis is on numerical methods and electronics. It is incorrect to state that B.C.A is a prescribed qualification for admission to M.S.C. Computer Technology in Periyar University. The third respondent was very much aware and deliberately admitted the petitioner who is ineligible and it is only the third respondent who should be made liable for the damage suffered by the petitioner as otherwise it will be difficult for the University to discipline the Institutions run by the private management.

7. The third respondent appeared through counsel and also filed a counter. In the counter after referring to the grant of permissiong affiliation the third respondent points out that the affiliation order do not contain any information regarding the minimum eligibility criteria for admission to M.Sc., Computer Technology. The writ petitioner submitted his application for admission and an entrance test was conducted and based upon that he was selected and admitted and joined as one of the eleven candidates. The third respondent on 27.9.2001 forwarded the application for issuance of eligibility certificate and recognition of the candidates including the petitioner. The first respondent issued hall ticket to the petitioner and other students for appearance in the first semester examination. The petitioner has joined the second semester class as well. The first respondent issued a letter stating that the petitioner is not eligible for admission to M.Sc., computer technology course since the petitioner is a candidate with B.C.A. Degree alone. The third respondent submitted a representation for reconsideration while adding that the qualification possessed by the petitioner is equivalent to the qualification prescribed by the first respondent university for admission to M.Sc., Computer Technology. The second respondent on 6.5.2002 informed the third respondent that the petitioner has not secured 50% marks in part III of BCA course and as such he is not eligible for admission to M.Sc computer technology and the first year examination results was withheld. A representation has been submitted to the Vice Chancellor for favourable consideration and relaxation and no order has been passed by the Vice Chancellor. The second respondent has orally informed that there cannot be a reconsideration and that the petitioner will not be permitted to sit for the second semester examinations. At the time of granting affiliation no eligibility or minimum eligibility marks has been prescribed by the University and therefore the first and second respondents are estopped from rejecting the application of the petitioner. The admision of the writ petitioner is a bona fide act on the part of the third respondent college.

8. Heard Mr.A.L.Somayajee, learned senior counsel for Mr.Goldwern and Mr.B.Vijayakumar appearing for the petitioner, Mr.Subbiah, learned counsel appearing for the respondents 1 and 2 and Mr.S.parthasarathy, learned counsel appearing for the third respondent.

9. The points that arise for consideration are:-

(i) Whether the petitioner possess the prescribed eligibility qualification for being admitted to the M.Sc., Computer Technology Course?

(ii) Whether the respondents are estopped by their conduct?

Both the points could be considered together.

10. Mr.A.L.Somayajee, learned senior counsel contended that the University has not framed regulations prescribing the eligibility qualification for admission to M.Sc., Computer Technology and specifically contended that in the absence of any regulation, it is not open to the respondents 1 and 2 to refuse admission o the petitioner who is eligible to be

admitted to M.Sc., Computer Technology course. Admittedly the petitioner has passed B.C.A (Bachelor of Computer Application) alone and not Bachelor of Computer Technology. This court called upon Mr.Subbiah, learned counsel appearing for respondents 1 and 2 to produce the regulations framed by the University with respect to M. Sc., Computer Technology course. After taking adjournment, the counsel for the respondents 1 and 2 produced the regulations and scheme for examination for M.Sc., Computer Technology. A copy of the Appendix No.C-2 of the first respondent University Regulation was produced. As seen from the Appendix No.C-2, which is a part of the Regulations and scheme of examination, the eligibility qualification prescribed for admission to M.Sc Computer Technology is a pass in B.Sc computer TechnologygB.Sc., Information Technology. The said regulation also prescribes that the candidates for admission to the first year for the two year M.Sc., Computer Technology shall be required to have a pass in three year degree programming in B.Sc., Computer Technology or B.Sc., Information Technology. The learned sen ior counsel also was furnished with a copy of the regulation framed by the first respondent University. Therefore it is clear that the first respondent-University has prescribed the eligibility qualification for admission to M.Sc., Computer Technology course and the contention to the contra cannot be sustained.

11. It follows automatically that unless the petitioner possess the eligibility qualification he could not be admitted to the M.Sc., Computer Technology course. Concedingly, the petitioner has not acquired a degree in B.Sc., computer technology or B.Sc., Information Technology. But he has only passed BCA (Bachelor of Computer Application) Therefore the petitioner is ineligible to be admitted.

12. It is rather extraordinary on the part of the third respondent to have admitted the writ petitioner and has gone to the extent of supporting the claim of the petitioner. The third respondent was very much aware of the minimum eligibility qualification prescribed for admission, yet for reasons best known it has chosen to admit the petitioner. As rightly pointed out by the second respondent the third respondent had admitted the petitioner with full knowledge with a view to make an unlawful gain and the act of the third respondent has to be reprimanded a or deprecated. Therefore the contention advanced by the counsel for respondents 1 and 2 merits acceptance.

13. As regards the plea of estoppel, the third respondent having admitted the petitioner had sent the application for verification belatedly and in the meanwhile the first semester examination hall ticket has been issued on the basis of examination application and list of candidates forwarded by the third respondent college and immediately after verification as to the eligibility of the petitioner for admission, the second respondent not only withheld the results for the first semester examination, but also intimated the third respondent well in time that the third respondent has admitted a candidate who is ineligible. Even thereafter the third respondent persisted and sought for relaxation or accommodation while pleading for the writ petitioner and the said request has also been rejected immediately. The plea of estoppel cannot be maintained against the first or second respondent and such a plea against the third respondent is unsustainable as the third

respondent has colluded or acted hand in glove with the writ petitioner. At any rate the third respondent is not the competent authority to decide the eligibility qualification prescribed by the first respondent university for admission to M.Sc., Computer Technology. Hence the plea of estoppel also fails.

14. The learned senior counsel vehemently contended that the petitioner be permitted to continue on sympathetic grounds. This court is unable to sustain such a persuasive request on sympathetic consideration, which cannot be a ground to allow the petitioner to continue his studies when he is ineligible. This court shall not be a party to an illegality. So also the respondents 1 and 2. This court also will not be justified in permitting the petitioner to appear for the next semester examination or issuing directions. The petitioner has to blame himself or to blame the third respondent and if he has got any grievance he has to proceed against the third respondent for appropriate relief of damages or compensation as the case may be.

15. The question whether the petitioner who has not been admitted validly could be permitted to take up examination has to be answered against the petitioner in the light of the pronouncement of the Supreme Court in CBSE and another Vs. P.Sunil kumar and others reported in 1998 (5) SCC 377 where the Supreme Court deprecated the practice of allowing students provisionally for the examination conducted by the Board or the University and then ultimately lending a hand to regularize their appearance by taking a sympathetic view. In this respect the Supreme Court held thus:-
"Whether the High Court was justified in issuing these impugned directions? This question no longer remains res integra. This court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic view of the matter. In the case of A.P. Christians Medical Educational Society Vs. Govt of Andhra Pradesh, (1968 2 SC 667) this court held that the court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University Act and the regulations of the University. It was also observed that the court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of Sate of T.N. Vs. St.Joseph Teachers' Training Institute, this court held that the direction of admitting students of unauthorized educational institutions and permitting them to appear at the examination has been looked on with disfavour and the students of unrecognized institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination. All these cases were again considered by a there-Judge bench of this court in the case of State of Maharashtra Vs. Vikas Sahebroa Roundale (1992 4 SCC 435) and it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in

examination and to be accommodated in recognised institutions. The court ultimately struck down the direction issued by the High Court. In yet another case, Guru Nank Dev University Vs. Parminder Kr.Bansal (1993 4 SCC 401) another three-judge Bench of this court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. The court observed:
"We are afraid that this kin of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

16. In the light of the above discussion, this court holds that the petitioner is not entitled to any remedy and the writ petition is dismissed.

17. Normally on facts this court should have awarded cost against the petitioner, however, taking a considerate view, this court is not awarding cost as cost, if at all, has to be awarded only against the third respondent-College. Consequently, connected WPMP is also dismissed.

Index:Yes
Internet:Yes
gkv
29-08-2002

copy to:-

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rep. by its Vice Chancellor, Tirunelveli

2. The Controller of Examinations
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Chairman

Order in
W.P.No: 20424 of 2002